Supreme Court, U.S.
FILED
JUL 31 2010
OFFICE OF THE CLERK

No. 09-1430

In The
Supreme Court of the United States

MARK D. DAVIS,

Petitioner,

v.

TONYA S. BLACKSTOCK,

Respondent.

Petitioner's Reply Brief to
Respondent's Brief in Opposition to the
Petition for Writ of Certiorari

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July 27, 2010

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PROCEDURAL BACKGROUND

1. Petitioner is Mark D. Davis ("Mark"), Father of one minor child, Katie Davis ("Katie"). Respondent, Tonya S. Blackstock ("Tonya"), is Mother of Katie.

2. On May 25, 2010 Petitioner Mark's Petition for Writ of Certiorari was docketed.

3. On June 24, 2010 Respondent Tonya's Brief in Opposition to Mark's Petition was docketed.

4. On June 30, 2010 Mark was served one (1) photocopy of Tonya's Brief in Opposition.

5. On July 10, 2010 Mark filed his Motion to Strike Tonya's Brief in Opposition in accordance with Supreme Court Rule 21.2(c).

6. On July 25, 2010 Mark received a package from the Clerk of the Court which returned to Mark all copies of his Motion to Strike Tonya's Brief in Opposition, along with a letter advising Mark his response to Tonya's Brief in Opposition must be a brief in accordance with Supreme Court Rule 33.1.

7. In accordance with Supreme Court Rule 33.1, Mark now submits this, his Petitioner's Brief in Reply to Tonya's Brief in Opposition.

CONSTITUTIONAL QUESTIONS

8. Mark's Petition for Writ of Certiorari to the Supreme Court of Alabama seeks review of Alabama state court orders which unconstitutionally implicate Mark's fundamental liberty interest in his parent-child relationship with Katie, violate Mark's right to freedom of association with Katie, violate Mark's right to equal protection of the laws and due process of law, and deny Mark the benefit of full faith and credit to which the lawful orders of the Tennessee courts are entitled. The Court derives jurisdiction from 28 U.S.C. § 1257. (Petition, p. 4).

TONYA'S BRIEF IN OPPOSITION

9. Tonya's Brief in Opposition to Mark's Petition is based upon *Ankenbrandt v. Richards*, 504 U.S. 689 (1992) and *Marshall v. Marshall*, 547 U.S. 293 (2006). The basis for federal trial court jurisdiction in *Ankenbrandt* was a diversity of citizenship jurisdiction under 28 U.S.C § 1332. Marshall was about federal Bankruptcy Court jurisdiction in "core proceedings" under 28 U.S.C § 157. As both *Ankenbrandt* and *Marshall* were about federal trial court jurisdiction, neither case has any bearing on the jurisdiction of this Court to review the constitutional questions Mark has articulated. Cnf. Questions Presented for Review in Mark's Petition. (Petition, pp i-vi). Consequently, neither *Ankenbrandt* nor *Marshall* is controlling legal authority in support of the premise for which they are cited – that this Court should deny Mark's

Petition for lack of jurisdiction, because this Court's appellate jurisdiction derives from 28 U.S.C. § 1257.

SUPREME COURT RULE 15.2

10. Supreme Court Rule 15.2 states:

> "In addition to presenting other arguments for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition. Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called to the Court's attention in the brief in opposition."

11. Tonya's Brief in Opposition does not dispute any portion of Mark's Petition as factually inaccurate or untrue. Consequently, the Court may take as true the facts and law as stated in Mark's Petition. Supreme Court Rule 15.2. However, Tonya's Brief in Opposition contains material misrepresentations of fact to which the Court's attention are directed.

MATERIAL MISREPRESENTATIONS OF FACT

12. Tonya's Brief in Opposition erroneously claims Tennessee deferred jurisdiction to Alabama. (Brief in Opp., p.1-3). In reference to the alleged order by which Tennessee deferred jurisdiction to Alabama, the Alabama Court of Civil Appeals said: "...the record does not contain the alleged order, and we cannot consider this allegation as proven for purposes of this appeal." *Davis v. Blackstock*, So.3d ___ (Ala. Civ. App. 2007) (App. F, p. 93a at fn 1). To this day the Tennessee trial court has never acted on the remand as instructed by the Tennessee Court of Appeals. (App. D, p. 73a and App F, p. 92a).[1]

13. Tonya's Brief in Opposition erroneously claims Mark "has not paid child support in accord with the [September 1], 2006 Order, rendering him significantly in arrears..." (Brief in Opp., p. 3). In truth and in fact, on the child support issue the Alabama Court of Civil Appeals reversed the trial court and remanded. *Davis v. Blackstock*, So.3d ___(2060017) (Ala. Civ. App. 2010) (App. I, p. 141a). To this day the Alabama trial court has never acted on the remand as instructed by the Alabama Court of Civil Appeals. (App. I, p. 141a).

14. In contrast to the slanderous implication Mark has failed in his duty to support Katie, Mark has

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[1] All appendix references are to Mark's Petition for Writ of Certiorari docketed May 25, 2010.

always financially supported Katie and met her every material need without any court order to do so. The Tennessee trial court four/four equal custody Order said the following about Mark,

> "The court is impressed with the father, Mark Davis' actions to be involved in the life of his minor child. The court finds that there is nothing in the record that indicates the father does not provide nurturing and love to the minor child while in his care and control." (App. B, p. 25a, number 7).

In addition to always providing for Katie's material needs, Mark has spent thousands upon thousands of dollars in legal fees over the last eight years trying to protect Katie's fundamental right to a parent-child relationship with each parent. Until Mark or Tonya have been determined legally unfit or have defaulted in properly caring for Katie, there is no basis in fact or any need for court ordered child support and any governmental interest in same is *de minimis*. Cnf. the Tennessee equal time custody order which found no need for court-ordered child support. (App. B, p. 25a, number 10).

FOCUS ON DEEPER ISSUE

15. The material misrepresentations of fact in Tonya's Brief in Opposition divert attention from the deeper issue in this case - whether the Alabama courts have unconstitutionally infringed upon Katie's right to the meaningful relationship with Mark

which the Tennessee courts tried to protect with an equal time custody order. The Tennessee Court of Appeals in upholding the Tennessee trial court four/four equal custody Order ,said the following about Tonya's conduct toward the father-child relationship.

> "This record contains abundant evidence that [Tonya] has refused to adhere to the plain requirements of the parenting plan and that she has purposely and deliberately embarked on a course which, if not stopped, would eventually erode the relationship between Mr. Davis and Katie." *Davis v. Davis* (No. M2003-02312-COA-R3-CV) (Lexis 664,) (Tenn. Ct. App. 2004) (not reported in S.W.3.d). (App. D, p. 71a).

ALA. ABUSE OF *PARENS PATRIAE* AUTHORITY

16. When this Court grants the Writ requested in Mark's Petition it will look through the prism of the ore tenus rule and see the real issue - Alabama's unconstitutional action when the child of two fit parents is deemed a ward of the state on the specious claim of *parens patriae* authority to act *in loco parentis*. Cnf. *Thorne v. Thorne*, 344 So.2d 165 (Ala. Civ. App. 1977). When, as in the case at bar, Katie has two fit, loving parents and she is thriving in equal custody as mandated by court order, Alabama has no compelling state interest to trigger *parens*

patriae authority. Mark's Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

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